

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

United States Courts
Southern District of Texas
FILED

JUN 22 2007

GAVIN GORYL AND RAUL LABARDINI,

§

Michael N. Milby, Clerk

PLAINTIFFS,

§

VS.

§

C.A. No. **H-07 -2079**
JURY REQUESTED

§

TIDAL SOFTWARE, INC. AND

§

FLINT J. BRENTON,

§

DEFENDANTS.

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NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§1441 and 1446, Tidal Software, Inc. ("TSI") and Flint J. Brenton ("Brenton"), defendants in Cause No. 2007-31382, in the 11th Judicial District Court, Harris County, Texas, serve this notice of removal from that court to the United States District Court for the Southern District of Texas, Houston Division, on the basis of diversity of citizenship and amount in controversy. The notice is based on the following grounds:

Both at the time the lawsuit was filed, and at the time of removal, both plaintiffs were, and remain, citizens of the State of Texas.

Both at the time the lawsuit was filed, and at the time of removal, TSI was, and remains, a corporation incorporated and existing under the laws of California, keeping its principal place of business and its home office in California.

Both at the time the lawsuit was filed, and at the time of removal, Brenton was, and remains, a citizen of the State of California.

This is a civil action. The original petition filed in the State court, a true copy of which is filed herewith, alleges defendants are liable under various causes of action for actual and punitive damages, treble damages, and attorney

fees in an amount in excess of \$75,000 per plaintiff. Plaintiffs' pleading also seeks equitable relief in the form of, *e.g.*, a constructive trust, disgorgement of profits, declaratory judgment, and injunctive relief. The amount in controversy for each plaintiff exceeds \$75,000 per plaintiff. *See Allen v. R & H Oil & Gas Co.*, 63 F.3rd 1326, 1336 (5th Cir. 1995) (affirming the district court's denial of motion to remand, holding the Court may examine plaintiff's pleading and determine from the face of the pleading alone that it is "more likely than not" that damages will exceed the jurisdictional amount); *HWJ, Inc. v. Burlington Ins. Co.*, 926 F.Supp. 593, 595 (E.D. Tex. 1996) (court must first determine whether it is facially apparent from State court pleading that amount in controversy exceeds jurisdictional minimum). The Court may also determine the amount in controversy by examining the damage claims made, and the verdicts awarded, in similar cases. *E.g.*, *De Aguilar v. Boeing Co.*, 11 F.3rd 55, 58 (5th Cir. 1993); *Monticello Ins. Co. v. Patriot Security, Inc.*, 926 F.Supp. 97, 99 n. 9 (E.D. Tex. 1996) (court may draw upon damage awards in similar cases); *Carnahan v. Southern Pacific Railroad Trans. Co.*, 914 F.Supp. 1430, 1431 (E.D. Tex. 1995).

By virtue of diversity of citizenship and the amount in controversy the United States district courts have original jurisdiction over this case.

Cause No. 2007-31382, in the 11th Judicial District Court, Harris County, Texas, was served on defendants, or the original petition setting forth the claim for relief upon which this notice is based was otherwise first received by defendants, not more than thirty (30) days before the filing of this *Notice of Removal*, and this *Notice of Removal* is being filed within one year of the date suit was first filed in State court.

Simultaneously with the filing of this notice of removal, defendants are filing two copies of all process, pleadings, and orders served upon them in the

State court. A copy of this notice is also concurrently being filed with the State court and served upon opposing counsel.

Accordingly, defendants hereby remove this case to this court for trial and determination.

Respectfully Submitted,

JOHN L. ROSS

ATTORNEY IN CHARGE

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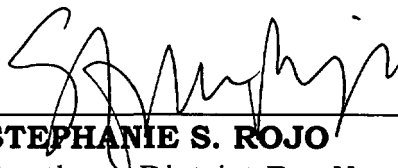
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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I certify that one true and correct copy of the foregoing instrument was served on plaintiffs' lead counsel of record by first class mail, postage prepaid, this 22nd day of June, 2007.



STEPHANIE S. ROJO